

M I N N E S O T A

Board of Dentistry • Updates

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MANDATORY REPORTING IS NOW LAW!

A bill was passed in the most recent legislative session that will require dental professionals to report knowledge of dentists, hygienists, and assistants who are practicing while impaired. The law takes effect August 1, 2002. The full text of the bill can be viewed on the Board's website (www.dentalboard.state.mn.us).

Impairment is defined as inability to practice with reasonable skill and safety by reason of...

- Illness
- Use of alcohol, drugs, chemicals, or any other materials, or
- Mental, physical, or psychological condition

The law outlines the specific reporting requirements of various people and organizations. Reporting is mandated for institutions, dental societies/associations, dentists, hygienists, assistants, insurers, courts, and individuals. The reporting requirement applies to self-reporting as well as reporting of colleagues. Two primary goals are achieved through this obligation: (1) prevention of harm to patients, and (2) early assessment and intervention for the dental professional. Early assessment and treatment holds promise for improved outcomes.

Those who work with an impaired individual may often believe that they are able to help the person, or they may choose to ignore the behavior(s). Neither of these options have shown to be as effective as professional intervention. As a result of this new law, colleagues are not only empowered, but are obligated to report. Note that the law requires reporting; it is a condition of a Minnesota license or registration. The reporting requirement may be met by contacting the Board directly, or by contacting the Health Professionals Services Program (HPSP).

The law protects the reporter by establishing immunity from civil liability or criminal prosecution if the report is made in good faith. The report may be filed **confidentially**, whereby the individual who is believed to be impaired would not be told who filed the report. Although **anonymous** reports will be acted upon by the Board, an *anonymous report does not satisfy the reporting requirement*, and action may be taken against an individual for not reporting information of which they should have been aware.

Please contact the Board or HPSP with any questions about how to fulfill your reporting requirement.

MESSAGE FROM THE PRESIDENT

Freeman Rosenblum D.D.S., M.S.D.



The Minnesota Board of Dentistry routinely receives inquiries with reference to delegation of duties for dental auxiliaries. Approximately five years ago the subject of non-permissive rules was discussed by the professional associations and the Board. Since our state has permissive rules in place, there was a desire to change to the non-permissive format to allow the Board to make changes without having to go to great lengths. The Minnesota

Dental Practice Act describes the duties the auxiliary can perform and under what type of supervision. It is quite specific and assists the Board staff and members in determining if there has been a violation of the rules.

In comparison, there are a few states that have non-permissive rules indicating what the auxiliary cannot do. This of course leaves a wide open door for interpretation, but it also allows changes to be implemented with ease, particularly the adoption of new technologies and philosophies.

The main disadvantage to permissive rules is that when there is a desire to make changes, there is an extensive process that must be gone through to develop those changes. There is consensus among all of the professional associations and the Board on these duties when they become rule, as all are included in the discussion and decision process. Once the rule language is completed, a Statement of Need and Reasonableness (SONAR) is formulated. There could be public hearings on the subject, and ultimately the change is brought to the governor for approval.

Last year, the Minnesota Dental Assistants Association proposed changes to allow for more expanded duties. It has taken about one year to complete the first process of getting the Board and the associations to agree on all aspects of the language. The SONAR was recently completed, and published for public comment. We anticipate that we will be completing the process to finalize the changes in the Dental Practice Act in the next year.

PERMISSIVE OR NON-PERMISSIVE?

Which process is better? One may argue the latter approach is efficient and does not hinder the profession or put the public at risk. This question arises when we receive an inquiry about a new procedure that is not part of the existing rules. For example, can the dental hygienist place antibiotic chips in the sulcus? Is

it allowable to have dental hygienists bleach teeth with heat or laser? Usually, if the procedure is allowable but the technique to accomplish the task is different, it is still acceptable. If the supervising doctor is comfortable with the hygienists' training and use of the new protocol on patients, then the dentist is responsible for any adverse outcome.

The Minnesota Board of Dentistry is always willing to review questions from the profession regarding the delegation of duties. It is my position that we continue with the concept of permissible duties. The time and effort to change these duties or interpret the rules is well worth the effort. This approach gives all involved a very concise picture and establishes a clear path to follow when dealing with the dental needs of our citizens.

Specialty licensure is now moving forward in a direction which is very acceptable to me. It is my belief that there is a critical shortage of well trained individuals in our state in all of the specialties. This includes dental educators and practitioners.

The Board has agreed to evaluate specialists for a general license on a case by case basis if they have completed an advanced education program of at least two years in one of the recognized fields established by the ADA, even though they may not have a license in another state. The proposal would allow the candidate to bypass a clinical exam (CRDTS), but s/he would be required to pass the jurisprudence test and completed parts 1 and 2 of the National Boards. Previously, an applicant could not go this route without having a license in another state. Next year we will go to the legislature to pursue a change in the statute to allow individuals with an advanced degree or certificate to receive a specialty license without passing another clinical exam or having to go through credentials. The only additional requirements would be passing national boards and the Minnesota jurisprudence examination.

I think our Board should continue to be innovative in licensing qualified dentists to practice in Minnesota without compromising the high standards our predecessors established. The difficulties of dental access are very severe, and the Board would be doing the public a disservice by not investigating every possible option available to permit dentists to provide much needed services.

A handwritten signature in black ink that reads "Freeman Rosenblum, D.D.S., M.S.D." with a stylized flourish at the end.

LEGISLATIVE UPDATE

2002 Legislative Summary

In addition to the Mandatory Reporting law described throughout the newsletter, other legislation was passed in 2002 that also affect the Board.

Guest Licensure

Dental professionals in states bordering Minnesota are now able to apply for a limited Guest License. The Guest License allows dentists, hygienists, and assistants to practice at a specific public health site in Minnesota, helping to ease to access problems faced by so many MinnesotaCare, Medical Assistance, and uninsured patients. This program is funded through licensefees.

Volunteer Health Care Provider Program

This program establishes a mechanism for dental and other health professionals to have their liability insurance

paid for by the Boards to allow them to volunteer at sites where they would not otherwise be covered. This program is funded through the budgets of the Boards of Dentistry, Medical Practice, and Nursing.

Donated Dental Services Program

The Board of Dentistry was made responsible for establishing the criteria, awarding a grant, and monitoring results for a program intended to match people in need of dental services with dentists throughout the state willing to provide pro bono care. This program is funded through the provider tax.

PROFESSIONAL CORPORATIONS UPDATE

In the Winter/Spring 2002 issue of the *UPDATES* newsletter, the Board addressed the issue of incorporation of professional firms. The article dealt with the Professional Firms Act and the requirement of any corporation filing under chapter 319.B to file with the respective Board that has jurisdiction over their professional services.

One issue the article did not explore was the issuance of retroactive fees. The Executive Committee of the Board addressed this issue at its May 28, 2002 meeting. The Committee proposed establishing a maximum of 5 years of retroactive fees. The full Board voted and approved unanimously at its June 21, 2002 Public Board meeting to adopt the proposal. The chart below provides an example of how an individual corporation would incur charges, assuming that the corporation has not previously filed with the Board.

If a corporation filed prior to 1997, they would still incur no more than the five year maximum fee.

To date, the Board relies upon individual licensees to report their incorporation to the Board. However, if an individual licensee who is fully aware of the law willfully *refuses* to pay their annual fee, the Board would be obligated to report that corporation to the Secretary of State. It is likely that the corporation would lose its tax benefits. The Secretary of State also has the authority to dissolve the corporation.

A piece of advice: contact legal counsel with background in corporate law and/or the Secretary of State's office if you are unsure whether your corporation is under the jurisdiction of the Board.

YEAR	DESCRIPTION	FEE
1997	Year of incorporation	\$ 0.00
1998	Initial filing fee	100.00
1999	Annual renewal	25.00
2000	Annual renewal	25.00
2001	Annual renewal	25.00
2002	Current year renewal	25.00
TOTAL TO BE CURRENT		\$ 200.00

THE HEALTH PROFESSIONALS SERVICES PROGRAM

A Unique Alternative for Meeting Reporting Obligations

Health professionals, like anyone else, are susceptible to substance, psychiatric and medical disorders. Left untreated, these problems can put patients at risk. “Many health care practitioners don’t get the help they need,” explains Sheila Specker, MD, associate professor of Psychiatry at the University of Minnesota, “this is usually due to the social stigma, fear of exposure or their lack of awareness.” Until recently, the only options were to ignore the potential impairment or file a report with the licensing board.

Created in 1994 as an alternative to board discipline, the State of Minnesota’s Health Professionals Services Program (HPSP) offers a proactive way to fulfill reporting requirements and get confidential help for illnesses. By law, health practitioners and employers can report a potential impairment to the licensing board or to HPSP. “Most choose HPSP,” according to Monica Feider, program manager, “because HPSP is confidential, supportive, and non-disciplinary.”

Many people are unclear about their reporting obligations and feel uneasy about reporting themselves, a colleague, or an employee to HPSP. Getting involved in the personal issues of another professional is a difficult decision. Yet, there is the ethical duty to protect patients from potential harm. All referrals made to HPSP are regarded as privileged data and kept confidential. Anyone who submits a report “in good faith” is immune from civil liability or criminal prosecution (Minn. Stat. § 214.34).

“Early intervention allows for successful treatment before patient safety is compromised,” adds Dr. Specker. The majority of health professionals participating in HPSP are monitored for a substance disorder. However, participants are also monitored for psychiatric and medical disorders and oftentimes dual disorders.

Nearly 2000 licensees have enrolled in HPSP since the program’s inception 8 years ago. HPSP currently provides monitoring services to approximately 480 licensees. Of these, 64% either reported themselves to the program or were referred by a third-party, usually a co-worker or employer. All others were referred by their boards, sometimes in conjunction with disciplinary action.

The program monitors treatment progress, work quality, and medications, along with attendance at support groups. Random urine screens, if alcohol or drug use is part of the illness, are also monitored. HPSP might also require counseling, work limitations or other individualized conditions that address the persons needs and public safety. Typically, participation agreements are for thirty-six months.

All eligible health care professionals licensed in Minnesota can receive HPSP monitoring services – as long as they comply with program expectations. Participants are responsible for the cost of their own evaluation, treatment and toxicology screens if necessary.

To learn more about HPSP and how to refer someone who may have an illness, call (651) 643-2120, visit their Website at www.hpsp.mn.state.us, or write for information at 1885 University Avenue, Suite 229, St. Paul, MN 55104.

HIPAA

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established national standards to protect the privacy of personal health information. The federal act has an implementation date of April 2003. Because of the need to prepare for the implementation date, the Board has fielded a number of questions recently about HIPAA. The state’s Assistant Attorney General, who acts as counsel to the Board, advised that the HIPAA regulations will not affect the *Board’s* work. This is not to say that it will not impact the work processes for our licensees.

The Board cannot advise individuals on the implementation of HIPAA within your practices. Background information is available on the web site for the Office of Civil Rights (www.hhs.gov/ocr/hipaa). The site provides impressive overview and Q&A sections, as well as the opportunity to pose individual questions.

CE Clarification:

In our Winter/Spring 2002 *UPDATES* newsletter, we incorrectly cited the AGD as a "Non-Board Approved Sponsor." To clarify; the MN AGD is a long-standing CE sponsor with the Minnesota Board of Dentistry. It is the *National* AGD that has not gone through the official process to become a "Board-approved sponsor."

However, a licensee may independently submit the National AGD meeting courses they attend to the Minnesota Board of Dentistry for credit. The individual courses need to meet the criteria of the Board. The licensee should submit a CE card along with attending documentation from the sponsoring organization. The documentation must provide

Job Opportunity at the Board

The Board is interested in hiring an individual who has both a dental and a legal services background. The position would involve assisting with the preparation of legal documents, conducting chart reviews, coordinating the rulemaking process, and support of complaint and compliance activities.

If you are interested please contact the Office Manager, Sheryl Herrick, at 612-617-2253.



An Update on Proposed Rules



The Minnesota Board of Dentistry is proposing amendments to rules governing the permissible duties of dental hygienists and registered dental assistants under general, direct, and indirect supervision, *Minnesota Rules*, **3100.3600, 3100.8500, and 3100.8700**. These amendments would allow dentists to focus on more complex patient concerns which will facilitate increased clinic efficiency and productivity. These rule changes are necessary because the state is facing significant access to care issues. The patient would benefit the most from these amendments because it allows the hygienists and assistants to perform functions that would save time for dentists and patients, improving the capacity of the clinic by allowing more patients to be seen.

Implementation of these proposed expanded functions, and changes in level of supervision, will increase public access to quality dental care in a timely manner through better utilization of resources already present in the dental office. The Board acknowledges that the implementation of these rules will not generate additional costs to the agency or any other agency, and would not have any effect on state revenues. These rules are **not approved** yet and will not take effect until further notification by the Minnesota Board of Dentistry. At present, the Minnesota Board of Dentistry is awaiting public comments on proposed rules until 4:30 p.m. on August 19th, 2002, from any interested or affected individuals or groups.

The draft of possible rule changes is posted on the Minnesota Board of Dentistry's official website which is www.dentalboard.state.mn.us. Written comments, questions, or requests to receive a draft of the rules and request for more information on the rule amendments should be directed to: Marshall Shragg, Minnesota Board of Dentistry, University Park Plaza, 2829 University Avenue SE, Suite 450, Minneapolis, Minnesota, 55414-3249, **phone:** (612) 617-2257, **fax:** (612) 617-2260, and may also be directed by **email:** Marshall.Shragg@state.mn.us.

Please note: These rules are still in the process of approval and thus are not official until further notification by the Minnesota Board of Dentistry.

UPCOMING BOARD AND COMMITTEE MEETINGS

Dental Auxiliary Education Committee

Complaint Committee "A"
Complaint Committee "B"
Credentials Committee

August 2, 2002 8:00 a.m.

August 16, 2002, 8:30 a.m.
August 22, 2002, 8:00 a.m.
August 23, 2002, 8:00 a.m.

OPEN

CLOSED
CLOSED
CLOSED

Executive Committee

Complaint Committee "A"
Complaint Committee "B"

September 3, 2002, 6:30 p.m.

September 13, 2002, 8:30 a.m.
September 19, 2002, 8:00 a.m.

OPEN

CLOSED
CLOSED

Board Meeting

Credentials Committee
Complaint Committee "A"
Complaint Committee "B"

September 20, 2002, 8:30 a.m.

October 4, 2002, 8:00 a.m.
October 11, 2002, 8:30 a.m.
October 24, 2002, 8:00 a.m.

OPEN

CLOSED
CLOSED
CLOSED

NOTE: The Board offices will be closed on Monday, September 2, for Labor Day.

WEAR YOUR NAME TAG!

Patients have a right to know who is providing their care. One way to ensure this happens is for all staff with patient contact to wear name tags. Minnesota Statutes (MS § 144.6585) addresses this issue specifically. The law states that:

Any health care provider who is licensed, credentialed, or registered by a health-related licensing board...must wear a name tag that indicates by words, letters, abbreviations, or insignia the profession or occupation of the individual. The name tag must be worn whenever the health care provider is rendering health services to a patient, unless wearing the name tag would create a safety or health risk to the patient.

IN MEMORIAM



Nancy Skoog, the Board's administrative assistant, passed away June 14, 2002. Nancy worked in state government for 28 years and was with the Board since March 2000. She also worked with Public Safety and the Board of Nursing. Nancy was a vital part of the Board team and a good friend. She will be greatly missed.

DISCIPLINARY ACTIONS

Robert Bodin, D.D.S.

Order for Unconditional License,
Minneapolis, MN
06/21/02

Annette Young, R.D.A.

Voluntary Surrender
Shoreview, MN
06/21/02

Note: the full text of orders enacted since March 15, 2002, may now be viewed on the Board's web site.

Go to www.dentalboard.state.mn.us, click on 'Disciplinary Actions,' and click on the 'highlighted' order that you are interested in reviewing.

Definition of Terms:

Conditional License – licensee may continue to practice but must meet specific conditions of Order.

Limited License – licensee may continue to practice but may not perform certain procedures specified in the Order.

Suspended License – licensee may not practice for a specified length of time or until certain conditions are met.

Unconditional license/registration – all terms of the Order have been met, the individual's license/registration is fully restored, and s/he may practice without special conditions or restrictions.

WHAT DO YOUR ADS, FLYERS, WEBSITES, ETC. IMPLY ABOUT YOUR PRACTICE?

“Our Board Is The Best! We Are The Board That Teaches Other Boards! Recognized By The AADE! We Make Everyone Smile!”

The recent issue of *Mpls/St. Paul Magazine* has caused a number of people to contact the Board of Dentistry. The questions surround the concept of “Top Dentists,” and whether advertising this award is appropriate under the Dental Practice Act. Another concern relates to promoting specialties, such as *cosmetic dentistry*, that are not ADA-recognized specialties and are not approved by the Board.

The laws and rules related to advertising are seemingly very clear. M.S. §150A.11, subd 1, states that it is unlawful for any person to “practice under any name that may tend to deceive the public or imply professional superiority to or greater skill than that possessed by another dentist.” The Board's rules further define various restrictions and expectations for advertising. Among the relevant rules is M.R. 3100.6500, related to communicating deceptive statements or claims. This rule prohibits the use of any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim. Inappropriate statements or claims are considered those that:

- contain a misrepresentation of fact; are likely to mislead or deceive because in context they make only a partial disclosure of relevant facts;

- are intended or are likely to create false or unjustified expectations of favorable results;
- appeal to an individual's anxiety in an excessive or unfair way;
- contain material claims of superiority that cannot be substantiated;
- misrepresent a dentist's credentials, training, experience, or ability; or
- contain other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived.

M.R. 3100.6600 provides parameters for promoting fees and routine services. Again, the intent is to provide accurate information that does not create a false impression or expectation.

Back to the “Top Dentist” issue...

The position of the Board of Dentistry is that referring to a dentist or a practice as a “Top Dentist” recipient is inappropriate. The designation is one that clearly infers superiority, and is misleading to the public. Take this opportunity to check the statements made in your promotional materials, and make any changes that might be necessary to keep you in compliance. The public and your colleagues deserve the best from everybody.

THE NEW PATIENT TO YOUR PRACTICE...

Who sees the patient first?

My new patients are always scheduled with the hygienist. That way, she/he can assess the needs, review the medical and dental history, take appropriate radiographs, provide a thorough prophylaxis, and let me know what I am walking in to. Am I correct?

Actually, NO! You have just allowed that hygienist to diagnose, treatment plan, and perform treatment without your required assessment and direction. According to Minnesota Rule 3100.8700, the hygienist is allowed to perform a variety of duties only if "...a dentist has authorized them...", and those duties are carried out "...in accordance with the dentist's diagnosis and treatment plan."

Do you mean that the dentist must see all new patients first?

Yes! The ONLY exception currently allowed is for hygienists operating under a Collaborative Agreement, which is defined in Minnesota Statute §150A.10, subd. 1a, for limited authorization under very specific circumstances.

That protocol will decrease my production time. Besides, most patients are used to seeing the hygienist first and getting their teeth cleaned. Right?

It shouldn't decrease your production time, because this is the protocol that you have been required to follow all along. If you have been managing your patient flow otherwise, it will call for a change in scheduling, and a need to educate the public. The information should start with your front desk personnel alerting all new patients to the fact that initial appointments are scheduled with the dentist first. This appointment could be a great way to begin developing good relationships with your patients, and perhaps avoiding communication problems that lead to potential complaints with the Board. Good Luck!

FIRST SPECIALTY LICENSE AWARDED

The Board of Dentistry has the authority to grant specialty licenses to individuals who have completed post-doctorate training in one of the dental specialties recognized by the American Dental Association (ADA). This training must be completed at a dental school that is accredited by the ADA's Commission on Accreditation. Until recently, the Board had not chosen to use its authority under Minnesota Statute §150A.06, subd. 1c to grant specialty licenses.

On September 20, 2001, the Board reviewed an appeal made by an oral and maxillofacial surgeon for either a specialty license or a license limiting him to the practice of oral and maxillofacial surgery. The appeal was made on the basis that he had not completed the clinical examination administered by the Central Regional

Dental Testing Service and would not be practicing general dentistry. After extensive discussion between Board members and supporters of the oral surgeon, the Board voted to grant its first specialty license, contingent upon the oral surgeon becoming Board Certified through the American Board of Oral and Maxillofacial Surgery. The applicant completed the Board's request, and was granted an OMS specialty license earlier this year.

The Board has had an ongoing discussion regarding specialty licensure and the possibility of beginning to formally accept specialty licensure applications. Updates will be provided in future issues of our newsletter.

If you have a name or address change you must inform the Board in writing within 30 days of the change. Practicing dentists are required to have their primary practice address on record with the Board. All others may list a home address. Note: Your name and address are public information. Request for e-mail addresses: The Board would like to occasionally send information affecting licensure to dentists, hygienists and assistants via e-mail alerts. Please provide the Board with your e-mail address if you wish to receive these notices.

NAME AND/OR ADDRESS CHANGE

Name (last, first, middle)	Former Name (if applicable)
Old Address	New Address(if applicable)
Street: _____	Street: _____
City/Town: _____	City/Town: _____
State: _____	State: _____
Zip Code: _____	Zip Code: _____
MN Dental License/Registration Number:	Daytime Phone Number:
Signature (Required):	Email Address:
	Effective Date:



Please cut along dotted line and mail to Board office.



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M I N N E S O T A

Board of Dentistry · Updates

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